

87th Legislative Session – 2012

Committee: Joint Appropriations

Tuesday, February 07, 2012

P - Present
E - Excused
A - Absent

Roll Call

P Wismer
P Dennert
P Sutton
P White
P Dryden
P Bolin
P Romkema
P Deelstra
P Peters
P Novstrup (Al)
P Heineman
P Haverly
P Juhnke
P Putnam
P Carson
P Tidemann
P Wink, Vice-Chair
P Brown, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chairman Corey Brown.

Bureau of Finance & Management

Jason Dilges, Commissioner of the Bureau of Finance & Management met with the Joint Appropriations Committee to present the proposed FY13 budget.

The Bureau's proposed budget totals \$13,649,708 involving \$6,834,232 in general funds and \$6,815,476 in other funds. This budget represents an overall reduction of \$425,682.

Commissioner Dilges said the theme for budgets this year was sustainability. The focus the bureau was given was to try to sustain the cuts, keep the base as close to reset as possible, and look to make the targeted investments. The only change to the Bureau's budget, other than the proposed salary and billing increase, is the sale leaseback, a reduction of general funds to mirror the payment that comes in. This sales-lease back is scheduled to be retired in 2016.

Commissioner Dilges said the proposed state employee one-time bonus funds will be added to the Bureau's budget for distribution.

Senator Putnam asked about sustaining the FY12 budget cuts in all branches of government. Commissioner Dilges said the goal is sustainability and they are committed to continuing to operate as efficiently as possible. The Bureau not only cut their general funds but their billing rates as well. All of the Bureaus were engaged in that type of budget exercise. However, there are 3 branches in state government and all 3 were asked to participate in the cuts. For the most part the cuts worked because everyone participated. The Bureau recognizes there are areas where the cuts might have been too deep and some are proposed to be restored; however, adding back funds without regard to the ability to sustain the cuts it impairs the ability to make the targeted investments.

Senator Haverly commented on the agencies getting back to where we were before the cuts and asked if the Bureau was looking back several years or were they just considering last year's cuts. Commissioner Dilges said they would look at a multi-year approach in trying to sustain the cuts. Every single office/department, with the exception of one, took a 10% cut. In some cases it could be a detriment to the state of South Dakota if the state didn't participate in some things. The Governor challenged state government to look for better ways of doing things, to look at cuts that can be sustained over a long period of time.

Senator Haverly asked if the Bureau was able to identify the efficiencies, and if so, could that information be shared with the Committee. Commissioner Dilges said yes, they have gone to a lot of work to track where the base was, the changes made and going forward. The Bureau is still looking for efficiencies and in the process, it may cost FTEs but will free up general funds. Senator Haverly asked how future budgets would be affected after resetting the base for the proposed salary policy. Commissioner Dilges said once you dig out of a structural deficit you don't want to go back. The Governor has demonstrated his desire to never go back and has chosen to use one-time money; he is very cognizant that once something is in the base you have to sustain it forever. Despite the fact that state government is inching its way back we feel comfortable we can afford the 3%, and feel there will be enough ongoing receipts to cover the 3%. One-time can be made permanent but then they would have to be sustained.

Senator Tidemann commented on the end of the Sales-Leaseback in 2016 and asked if there was a possibility of recreating that in the future. Commissioner Dilges said those opportunities served the state well. However, since that time the IRS has tightened their regulations in regard to this

type of transaction making it no longer a feasible option. Financially, the state garnered savings because it was really a tax shelter that governments offer for profits. The IRS doesn't always like that option since it limits the amount of taxable income for businesses and corporations. Commissioner Dilges said the 10th anniversary of the issuance of tobacco bonds is coming up and most bonds are callable after 10 years. When the bonds were first issued the interest rate was much higher and the future of the tobacco companies was less certain than they are today. South Dakota, being one of the first states to sell their interest in tobacco payments received a fairly significant discount rate on the payments. The state is looking at refunding the bonds and issuing new bonds with money going to education enhancement trust fund.

Senator Putnam asked if an agency felt they cannot sustain their cuts and needs to increase their fees, would that happen. Commissioner Dilges said he was very proud that there is money on the bottom line and he would like to save it. However, the Governor's philosophy on fees is first and foremost we need to be efficient and treat the money like its general funds. Some fees don't cover the cost of providing the service; the Governor feels we may need to just pay for the costs as users. The fees could and should be increased where necessary and the user pay for the costs. Bureau's that charge a fee for services must still go through sustainability because in some cases the users are paying for the service with general funds. Commissioner Dilges said state government has done a good job of managing general funds and their other funds as well. However, the state really doesn't know where the federal funds will come from. The Bureau has looked at what federal funds coming to South Dakota would be in jeopardy and it amounts to approximately 11% cut. Some programs would need to be cut back if federal funds dry up.

Senator Tidemann asked for an update on the Bureau's computer systems. Commissioner Dilges said the Bureau has several systems including a 25 year old accounting system; a payroll system that was just created in 2000; and a budget system dating back to 1997. The payroll system is in good shape; the budget system will cease to have support in 2014 so the Bureau is looking at a new system. Commissioner Dilges said it would cost \$30-40 million to upgrade the accounting system and that is in the 5-7 year long-range plan. Because most of the state's systems are centralized, when there is a replacement, other agencies in state government will have to participate in the cost. Commissioner Dilges said his goal is to not come before the Committee asking for a big appropriation.

Regarding the proposed salary bonuses, Commissioner Dilges said the one-time payment in FY12 requires specific legislation in this fiscal year in order to pay it out. That legislation also has specific directives in it on how the money is to be distributed. The Bureau has several suggested scenarios on how the one-time money would be distributed. Senator Sutton asked about the difficulties in distributing the one-time payments with regard to federal and other funds. Commissioner Dilges said the Governor's proposal assumed a flat percentage per employee. Generally each department's base is increased by 3%; however, if your agency is funded by both general and federal or other, there is a pool of money that is available to all state government. If the state does a flat dollar amount that changes the pool of money; it would not

allow crossing fund sources by departments. It limits the amount of federal and other funds that can be brought to the table.

Senator Putnam asked about the economic advisors contracts. Commissioner Dilges said the Bureau still works with 2 groups. The Council of Economic Advisors is a voluntary group that meets quarterly and receives only a travel allowance; however, there is a contract with a USD professor that staffs that group. Following the 10% cuts in FY12, the Bureau renegotiated the contract with Global Insights of Boston.

Unified Judicial System

For FY2013, the Governor recommends a budget of \$45,251,931; comprised of \$33,179,891 in general funds, \$398,556 in federal fund expenditure authority, and \$11,673,484 in other fund expenditure authority; and 531.9 FTEs. This request is a total increase of \$2,197,754 – made up of an increase of \$1,388,812 (4.4%) general funds, an increase of \$5,017 (1.3%) federal funds, and an increase of \$803,925 (7.4%) in other fund expenditure authority – from the FY2012 budget. The recommended FY2013 budget includes an increase of 4.5 FTEs from the FY2012 budget.

Chief Justice David Gilbertson introduced the staff present at the meeting – **Ms. Patricia Duggan**, State Court Administrator, **Ms. Janet Borchard**, Director of Budget and Finance; **Ms. Nancy Allard**, Director of Court Services; and **Mr. Kent Grode**, Director of Technology. Distributed to the committee was a handout of the agency's responses to the committee's Budget Call letter. (**Document #1**)

Chief Justice Gilbertson updated the committee on the FY2013 budget changes. They include:

- A request for two additional court services officers; one in Sioux Falls and one in Rapid City. The UJS initially requested an additional court service officer per circuit due to the state having 10,000 people on probation;
- A request for the commencement of interpreter services in the court system. The UJS requested and the Governor declined to recommend the \$100,000 needed to fund this program; and
- A request for increased appropriation to fund the drug court program. The Governor did not recommend funding for this program because it was thought that the request was premature and a long-term statewide plan should be developed. The UJS has trained staff to move in the recommended Mitchell and Aberdeen areas if funding and FTEs are available and approved. Chief Justice Gilbertson stated that the UJS is seeking federal funding for the drug court program in Aberdeen. Even if the UJS is success, an approval for FTEs is still required.

Chief Justice Gilbertson noted that the UJS could use a statewide coordinator. Currently, the UJS has three different drug courts and alcohol court programs operating; and it would be beneficial to have a statewide coordinator providing uniformity in operation and training. A special appropriation for this position may be requested.

Representative Dean Wink asked about a timeline for the statewide drug court program. Chief Justice Gilbertson stated that the UJS could develop a plan within the year, but it may take four years to fully implement the plan due to available funding. Eleven areas across the state have been identified as areas that are large enough and could provide sufficient personnel and counseling services. The statewide program would cost about \$4 million annually and would serve about 400 clients.

In response to Representative Wink's question about the potential savings from the statewide drug court program, Chief Justice Gilbertson stated that the state will be saving over \$63 per day per person in the penitentiary (about \$24,000 annually per person). There are additional savings because the Department of Social Services would not be caring for the children with parents in the prison. The Department of Social Services provides the services at an annual rate of \$10,000 per child assuming there are no special needs.

Chief Justice Gilbertson noted that the budget proposal is based on UJS having the funds to make the payments on the Odyssey Software contract. Last year, money was set aside and to fund the full 10% budget cut, the UJS negotiated a deal with legislative leadership and the Governor whereby the UJS cut that funding. The budget cut was viewed as a one year budget fix. As payments are due and as the UJS moves further into the program, additional funding is needed. The UJS proposes to regain those funds through a \$10 increase in search fees. The only other options are to make a general fund appropriation to make the payments or for the UJS to default on payments.

Ms. Duggan distributed the "South Dakota Court State Fiscal Year 2011 Annual Statistical Report of the South Dakota Unified Judicial System" (**Document #2**) and provided an overview of the FY2013 budget recommendation.

In response to **Senator J.E. "Jim" Putnam's** question, Ms. Duggan distributed a handout entitled "Justice in the Balance: Courts WORK for South Dakotans" (**Document #3**). In FY2011, clerks of court receipted (along with other amounts) the following:

- \$3,729,883 to victims of crime;
- \$9,372,522 for school districts;
- \$71,044 for local domestic abuse programs;
- \$317,115 for advocates and attorneys for abused and neglected children;
- \$2,639,575 for court appointed attorneys, public defenders, and other legal aid
- \$611,549 to municipal general funds;

- \$2,559,901 to county general funds
- \$389,959 to other state funds;
- \$5,896,618 for court automation; and
- \$3,276,854 for law enforcement officer and judicial education and training.

Senator Larry Tidemann asked about a status update on the court automation system. Ms. Duggan informed the committee that the UJS is on-time and on-budget with the court automation system. After two years of planning, setting up the system, converting data, and testing the UJS implemented the system in six counties – Brookings, Codington, Deuel, Lake, Hamlin, and Clark. The next stage of implementation will occur in May and will include eight counties in the 3rd Circuit Court and all the counties in the 5th Circuit Court for a total of about 20 counties. About every six months, the UJS plans to implement about cluster of counties.

Currently, the UJS is scanning electronic documents for the counties that are on the pilot program in preparation of future use of electronic documents in every county. Ms. Duggan noted that the UJS will have counties on both the older Legacy system and the new court automation system until the transition is complete. Therefore, maintenance of both systems is needed and this time. The entire state should be on the new system by 2014. At that time, the UJS will offer e-filing of forms and electronic payments.

Senator Deb Peters asked about the payment terms on the court automation system contract. Ms. Duggan stated that the contract requires the UJS to pay a license fee every time a new county or circuit is brought on the system. This amount will increase until all counties are on the system. The UJS will be paying for maintenance of the older Legacy system and the new court automation system and service contracts.

Ms. Bochard stated that the cost of the system increases and decreases according to the work performed and the number of counties or circuits brought on the system. In FY2012, the UJS paid \$336,000 for license fees and will pay \$672,000 in FY2013. She noted that the license fee will only be paid once per county.

Senator Peters requested a breakout of the total contractual services expenses by funding sources.

Senator Putnam asked about the ability to sustain the budget cuts made in FY2012 for the Court Automation Fund. Ms. Duggan stated that the UJS reviewed the budget cuts from FY2012 and all expenses that will continue in the future. The expenses to the Court Automation Fund have all been tied to automation and technology. The cuts made last year in general funds would be sustainable and the expenses paid with the Court Automation Fund are fluid because of the changes based on public need.

Ms. Duggan stated that the UJS is working on a business plan concept for the drug court program which will identify long-term expenses, future long-term savings, personnel needs, etc. Information is included in the annual report, and additional information can be provided if needed.

Senator Putnam asked about UJS initiating new programs. Ms. Duggan stated that the UJS is working on having more forms available online and the ability to have the forms filed electronically versus personally take the forms to court. Although the forms are available online and have been rewritten at a 6th grade reading level, the UJS has people that are computer illiterate, can't read, or can't speak English. The forms will be translated to include both English and Spanish. Currently, the UJS only has forms for name changes and divorces. The UJS would like to have more forms available online to citizens.

In response to Senator Putnam's question, Chief Justice Gilbertson said that the UJS needs to provide services to everyone. Currently, in the eastern states, about 80% of all divorce cases are held without representation. People are attempting to represent themselves because of finances. MS. Duggan stated that in South Dakota, about 1 in 6 (20%) of all divorce cases do not include representation. Since August, the UJS has received over 150 calls from people seeking assistance on the forms. The UJS also has brochures with information explaining what people can expect in court and general protocol. The UJS does not want to take away the need for general counsel, but the UJS needs to work with the people that don't want or can't afford general counsel.

Representative Wismer asked about the changes made to Community Based Services in reaction to the FY2012 budget cuts. Ms. Duggan stated that the Community Based Services (CBS) is a program within the UJS that people without any alternative form of funding can apply to use the program as payment to be successful on probation. The fund had over \$1.4 million at one time, but with the cuts over the last two fiscal years the fund has about half the previous funding. The people that are not being served are those that don't have money. Because of the volatility of needs, the future budget need of this account can't be predicted.

Representative Wismer asked about the travel policy for judges to visit court houses. Ms. Duggan stated that there are judges assigned to each county court house. Instead of traveling on specific days each month to a particular court house, the judges travel when needed for a case. With improvements in technology, judges have been able to hear cases or statements without physically being present. Chief Justice Gilbertson stated that in the past year, the UJS has not received a single complaint that the court houses were not getting proper judicial services or timely services as a result of the change.

In response to Representative Wismer's questions pertaining to the statewide plan for the drug courts, Chief Justice Gilbertson replied that there are many dynamics involved in starting a drug court – size of town, availability of counselors, local law enforcement agreement, mobility of citizens especially college students, etc. He said that the UJS would like to have both a drug court

and alcohol court at all 11 identified locations. Ms. Duggan added that it takes about two years for each location to become operable to ensure training, negotiations with law enforcement, identify employees, establish relationships, and obtain funding.

Ms. Duggan responded to Representative Wismer's, stating that there are 106 court services officers in South Dakota. The average case load is about 100, but varies by location and need severity of the individual cases.

Ms. Duggan informed the committee that the UJS initially requested \$100,000 to establish an interpreter certification program in the state, but the Governor denied the request. After reviewing the need for an interpreter for the court system in South Dakota, the UJS will be asking for an amendment to the FY2013 budget in the amount of \$23,000 to start providing interpreting services.

MOTION: ADJOURN

Moved by: Peters
Second by: Juhnke
Action: Prevailed by voice vote.

Barb Bjorneberg and Lisa Shafer
Committee Secretary

Corey Brown, Chair